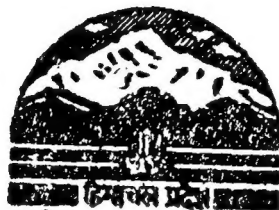


रजिस्टर्ड नं० ल०-33/एस०एम० 14/91.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बृहस्पतिवार, 12 सितम्बर, 1991/21 भाद्रपद, 1913

हिमाचल प्रदेश सरकार

विधान सभा सचिवालय

अधिसूचनाएं

शिमला-4, 10 सितम्बर, 1991

सं० 1-28/91-वि०स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम (संशोधन)

23 13-राजपत्र/91-12-9-91—1,213.

(1945)

मूल्य : 1 रुपया।

विधेयक, 1991 (1991 का विधेयक संख्यांक 16) जो दिनांक 10-9-1991 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो गया है, सर्वसाधारण को सूचनार्थ राजपत्र में मुद्रित किया जाता है।

लक्ष्मण सिंह,
सचिव।

हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम (संशोधन) विधेयक, 1991

(विधान सभा में पुरःस्थापित रूप में)

हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम अधिनियम, 1979
(1979 का 20) का और संशोधन करने के लिए विधेयक।

भारत गणराज्य के ब्यालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. (1) इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम (संशोधन) अधिनियम, 1991 है।

संक्षिप्त नाम
और
प्रारम्भ।

(2) यह 10 जुलाई, 1991 को प्रवृत्त हुआ समझा जाएगा।

2. हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम अधिनियम, 1979 (जिसे इतने इसके पश्चात् मूल अधिनियम कहा गया है) की धारा 5 में "ten crores" शब्दों के स्थान पर जहाँ कहीं भी ये आए हैं "twenty crores" शब्द रखे जाएंगे।

धारा 5 का
संशोधन।

3. मूल अधिनियम की विद्यमान धारा 16 के पश्चात्, निम्नलिखित धारा अन्तःस्थापित की जाएगी, अर्थात्:—

धारा 16-A
का अन्तःस्थापन।

"16-A. Conferment of additional functions on the Corporation.—

(1) Notwithstanding anything contained in this Act, the Governor may, after consultation with the Corporation, entrust either conditionally or unconditionally to the Corporation or its officers additional functions in relation to the social security or social insurance or uplift of the weaker sections of the society in the State.

(2) The Governor may, by order in writing and after consultation with the Corporation, confer on the Corporation such powers of supervisory nature over agencies, authorities or officers set up, constituted or appointed by the State Government as are necessary for providing social security or social insurance and uplift of the weaker sections of the society in the State.

(3) When any additional functions are conferred on the Corporation under sub-section (1), the Corporation shall exercise the same powers, discharge same duties and perform the same functions, as it would have exercised in discharge of duties and performance of functions assigned to it under section 16 and the provisions of this Act shall apply accordingly.

- (4) Where by virtue of this section powers and duties have been conferred or imposed upon the Corporation, or officers or authorities thereof, there shall be paid by the State Government to the Corporation such sum as may be agreed in respect of any extra costs of administration incurred by the Corporation in connection with the exercise of those powers and duties."

धारा 17
का
संशोधन।

4. मूल अधिनियम की धारा 17 में—

- (क) शीर्ष और पाठ में "six" शब्द के स्थान पर जहां भी यह आया है "seven" शब्द रखा जाएगा ;
(ख) खण्ड (e) के अन्त में आए "and" शब्द का लोप किया जाएगा ;
(ग) खण्ड (f) में आए चिन्ह "." के स्थान पर ";" and चिन्ह और शब्द रखे जाएंगे ;
(घ) इस प्रकार संशोधित खण्ड (f) के पश्चात्, निम्नलिखित खण्ड (g) जोड़ा जाएगा, अर्थात्—
"(g) Additional Functions Fund."

धारा 18
का
संशोधन।

5. मूल अधिनियम की धारा 18 में, अंक और शब्द "22 and 23" के स्थान पर, "22, 23 and 23-A" अंक, चिन्ह, शब्द और वर्ण रखे जाएंगे।

धारा 23-A
का अन्तःस्था-
पन।

6. मूल अधिनियम की विद्यमान धारा 23 के पश्चात्, निम्नलिखित नई धारा 23-A जोड़ी जाएगी, अर्थात्—

"23-A. *Additional Functions Fund.*—All amounts that are received by the Corporation from the State Government or from any other source for the performance of the additional functions assigned to it under section 16-A, shall be credited to this fund and it shall be used by the Corporation for the purpose for which such amount has been provided."

निरसन और
व्यावृत्तियां।

7. (1) हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम (संशोधन) अध्यादेश, 1991 (1991 का 1) एतद्वारा निरसित किया जाता है।

(2) ऐसे निरसन के होते हुए भी, उप-धारा (1) के अधीन निरसित अध्यादेश के अधीन की गई कोई बात या कार्रवाई, इस अधिनियम के तत्स्थानी उपबन्धों के अधीन की गई समझी जाएगी, मानो कि यह अधिनियम उस दिन प्रवृत्त हो गया था जिस को ऐसी बात या कार्रवाई की गई थी।

उद्देश्यों और कार्यों का कथन

पंच वर्षीय योजनाओं के उद्देश्यों को प्राप्त करने के लिए और समाज के अति कमजोर स्तर को ऊपर उठाने के लिए मार्ग प्रशस्त करने के लिए, राज्य सरकार ने अनुसूचित जाति और अनुसूचित जनजाति विकास निगम, हिमाचल प्रदेश महिला विकास निगम, हिमाचल प्रदेश भूतपूर्व सैनिक निगम जैसे और इसी तरह के अन्य निर्गमित निकाय स्थापित किए हैं। इन निकायों का उद्देश्य अनुदान, उपदान और ऋणों की व्यवस्था करके और यदि आवश्यक हो तो, प्रत्याभूति देकर और अन्य संस्थाओं से ऋण लेने के लिए सीमान्त धन की व्यवस्था कर के कमजोर वर्ग के आर्थिक विकास की गति को बढ़ाना है। इन द्वारा एक ओर तो सरकारी एजेंसियों और दूसरी ओर जनसाधारण के बीच समन्वय सुनिश्चित करना भी है। इसलिए कार्यात्मक सम्बन्धों को देखते हुए विभिन्न निगमों और स्वायत्तशासी निकायों के कृत्यों को मरल और कारगर रूप देने के लिए, उपरि और अन्य व्ययों, प्रबन्धकीय संगठनात्मक साधन की उपलब्धताओं को जाणावादी रूप देने की आवश्यकता है और अलग-अलग भागों और अव्यवहार्य कार्य को भी कम करने की आवश्यकता है। राज्य सरकार ने इन निगमों के कार्य का पुनर्विलोकन करने के पश्चात् कुछ निगमों को बन्द करने और उनका दूसरे निगमों में विलय करने का विनिश्चय किया है। इसलिए, राज्य में कमजोर वर्ग की सामाजिक सुरक्षा या सामाजिक बीमा या उत्थान के सम्बन्ध में हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम और इसके अधिकारियों को अनिश्चित कृत्य सौंपना आवश्यक हो गया है। इसके अलावा मुद्रा के मूल्य में कमी के कारण उक्त निगम की शेयर पूंजी को दस करोड़ रुपये से बढ़ा कर बीस करोड़ रुपये करना भी आवश्यक हो गया है। इन उद्देश्यों की पूर्ति के लिए हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम अधिनियम, 1979 में संशोधन करना आवश्यक हो गया था।

क्योंकि विधान सभा सत्र में नहीं थी और प्रस्तावित संशोधन को तुरन्त प्रभावी बनाया जाना था, इसलिए संविधान के अनुच्छेद 213 के खण्ड (1) के अधीन राज्यपाल, हिमाचल प्रदेश द्वारा 4 जुलाई, 1991 को हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम (संशोधन) अध्यादेश, 1991 (1991 का 1) प्रख्यापित किया गया था और 10 जुलाई, 1991 को राजपत्र (ग्रामाधारण), हिमाचल प्रदेश में प्रकाशित किया गया था। अब उक्त अध्यादेश को नियमित अधिनियमिति द्वारा प्रतिस्थापित किया जाना है।

अतः यह विधेयक पूर्वोक्त अध्यादेश को बिना किसी परिवर्तन के प्रतिस्थापित करने के लिए है।

नगीन चन्द्र पाल,
प्रभारी मंत्री।

शिमला :

10-9-1991.

द्वितीय भाषन

विधेयक का खण्ड 2. हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम की शेषर पूंजी को दस करोड़ रुपये से दोस करोड़ रुपये तक बढ़ाने के उद्देश्य के लिए है। खण्ड 3 के अधीन अन्तः-स्थापित किए जाने के लिए प्रस्तावित, धारा 16-A की उप-धारा (4) इसको सौंपे जाने वाले अतिरिक्त कृत्यों का अनुपात करने के लिए निगम को धन के संचाय का उपबन्ध करती है। राज्य सरकार द्वारा, इस प्रयोजन के लिए, उदत्त की जाने वाली रकम का ठीक-ठीक पूर्वानुमान लगाना सम्भव नहीं है। अन्तिम रूप से यह कहा जा सकता है कि विधेयक में अन्तर्विष्ट उपबन्धों के अधिनियमित किए जाने पर राज्य कोष से प्रति वर्ष एक करोड़ रुपये का अतिरिक्त आवर्ती व्यय अन्तर्वर्लित होगा।

प्रत्यायोजित विधान सम्बन्धी भाषन

शून्य

भारत के संविधान के अनुच्छेद 207 के अधीन राज्यपाल की सिफारिश

[कल्याण विभाग तस्ति सं० कल्याण-ए(5)-30/81]

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश अनुसूचित जाति और अनुसूचित जनजाति विकास निगम (संगोधन) विधेयक, 1991 की विषय-वस्तु के बारे में सूचित किए जाने के पश्चात् भारत के संविधान के अनुच्छेद 207 के अधीन विधेयक को विधान सभा में पुरःस्थापित करने और उस पर विचार करने की सिफारिश करते हैं।

Authoritative English Text

Bill No. 16 of 1991.

THE HIMACHAL PRADESH SCHEDULED CASTES AND SCHEDULED TRIBES DEVELOPMENT CORPORATION (AMENDMENT) BILL, 1991

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation Act, 1979 (Act No. 20 of 1979).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-second Year of the Republic of India, as follows:—

1. (1) This Act may be called the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation (Amendment) Act, 1991.

Short title and commencement.

(2) It shall be deemed to have come into force on the 10th day of July, 1991.

2. In section 5 of the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation Act, 1979 (hereinafter called the principal Act) for the words "ten crores" wherever these occur, the words "twenty crores" shall be substituted.

Amendment of section 5.

3. After existing section 16 of the principal Act, the following section shall be inserted, namely:—

Insertion of section 16-A.

"16-A. Conferment of additional functions on the Corporation.—

(1) Notwithstanding anything contained in this Act, the Governor may, after consultation with the Corporation, entrust either conditionally or unconditionally to the Corporation or its officers additional functions in relation to the social security or social insurance or uplift of the weaker sections of the society in the State.

(2) The Governor may, by order in writing and after consultation with the Corporation, confer on the Corporation such powers of supervisory nature over agencies, authorities or officers set up, constituted or appointed by the State Government as are necessary for providing social security or social insurance and uplift of the weaker sections of the society in the State.

(3) When any additional functions are conferred on the Corporation under sub-section (1), the Corporation shall exercise the same powers, discharge same duties and perform the same functions, as it would have exercised in discharge of duties and performance of functions assigned to it under section 16 and the provisions of this Act shall apply accordingly.

- (4) Where by virtue of this section powers and duties have been conferred or imposed upon the Corporation, or officers or authorities thereof, there shall be paid by the State Government to the Corporation such sum as may be agreed in respect of any extra costs of administration incurred by the Corporation in connection with the exercise of those powers and duties."

Amendment
of section
17.

4. In section 17 of the principal Act—

- (a) for the word "six" wherever it occurs in its heading and body, the word "seven" shall be substituted;
- (b) in clause (e) the word "and" occurring at the end, shall be omitted;
- (c) in clause (f), for the sign ".", the sign and word "; and" shall be substituted; and
- (d) after clause (f) so amended, the following clause (g) shall be added, namely :—

"(g) Additional Functions Fund."

Amendment
of section
18.

5. In section 18 of the principal Act, for the figures and word "22 and 23", the figures, sign, word and alphabet "22, 23 and 23-A" shall be substituted.

Institution of
section 23-A.

6. After existing section 23 of the principal Act, the following new section 23-A. shall be added, namely:—

"23-A. *Additional Functions Fund.*—All amounts that are received by the Corporation from the State Government or from any other source for the performance of the additional functions assigned to it under section 16-A, shall be credited to this fund and it shall be used by the Corporation for the purpose for which such amount has been provided."

Repeal and
savings.

7. (1) The Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation (Amendment) Ordinance, 1991 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act had come into force on the day on which such thing was done or action was taken.

STATEMENT OF OBJECTS AND REASONS

In order to achieve the objectives of the five year plans and to pave the way for the uplift of the poorest strata of the society, the State Government has set up corporate bodies such as the Scheduled Castes and Scheduled Tribes Development Corporation, the Himachal Pradesh Women Development Corporation, the Himachal Pradesh Ex-Servicemen Corporation and the like. The objective of these bodies is to speed up economic development of weaker sections by providing grants-in-aid, subsidies and loans, if necessary, standing guarantee and providing margin money for raising loans from these institutions. These are also to ensure coordination between the Government agencies on the one hand and the public on the other. Thus, in order to streamline the functioning of various corporations and autonomous bodies, keeping in view the functional relationships, there is need to optimise overhead and other expenditures, managerial and organisational resource availabilities and there is also need to minimise compartmentalised and unviable functioning. The State Government after reviewing the functions of these corporations have decided to close down some corporations and merge them into others. Thus, it has become necessary to entrust additional functions to the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation and its officers in relation to the social security in the State. Apart from this in view of decrease of money value, it had also become necessary to raise the share capital of the said corporation from Rs. 10.00 crores to Rs. 20.00 crores. To achieve these objectives it was necessary to amend the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation Act, 1979.

Since the Legislative Assembly was not in session and the proposed amendments had to be given effect immediately, the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation (Amendment) Ordinance, 1991 (H. P. Ordinance No. 1 of 1991) was promulgated under clause (1) of the Article 213 of the Constitution of India by the Governor of Himachal Pradesh on 4th July, 1991 and was published in the Rajpatra, Himachal Pradesh (Extra) on 10th July, 1991. The said Ordinance is now required to be replaced by a regular enactment.

Hence this Bill seeks to replace the aforesaid Ordinance without any modifications.

SHIMLA:
10-9-1991,

NAGIN CHANDER PAUL,
Minister-in-charge.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to increase the share capital of the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation from Rs. 10.00 crores to Rs. 20.00 crores. Sub-section (4) of section 16-A proposed to be inserted under clause 3, provides for the payment of money to the Corporation for performing additional functions to be assigned to it. It is not possible to anticipate the precise quantum of sum to be paid by the State Government for this purpose. Tentatively speaking, the provisions contained in the Bill when enacted will involve an additional recurring expenditure out of the State exchequer to the tune of Rs. 1 crore per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

—Nil—

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Welfare Department File No. KALYAN-A(5)-30/81]

The Governor of Himachal Pradesh, having been informed of the subject-matter of the Himachal Pradesh Scheduled Castes and Scheduled Tribes Development Corporation (Amendment) Bill, 1991, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

शिमला-4, 10 सितम्बर, 1991

सं० 1-30/91-वि० सं०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) (द्वितीय संशोधन) विधेयक, 1991 (1991 का विधेयक संख्यांक 17) जो दिनांक 10-9-1991 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है।

लक्ष्मण सिंह,
सचिव

हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) (द्वितीय संशोधन) विधेयक, 1991

(विधान सभा में पुरःस्थापित रूप में)

हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) अधिनियम, 1971 (1971 का 8) का और संशोधन करने के लिए विधेयक।

भारत गणराज्य के ब्यालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) (द्वितीय संशोधन) अधिनियम, 1991 है।

1971 का 8

2. हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) अधिनियम, 1971 धारा 6-ख की धारा 6-ख में—

धारा 6-ख का संशोधन।

(क) द्वितीय परन्तुक के अन्त में आए चिह्न “।” के स्थान पर “:” चिह्न रखा जाएगा ;

(ख) द्वितीय परन्तुक के पश्चात् निम्नलिखित तृतीय परन्तुक अन्तःस्थापित किया जाएगा, अर्थात्:—

“परन्तु यह और कि पूर्वगामी परन्तुक के अधीन संशोधन अधिनियम पेंशन का व्यवधान करने के लिए अवधि की संगणना करते समय, हिमवाधित क्षेत्र (असमरूप क्षेत्र) में समाविष्ट निर्वाचित क्षेत्रों से निर्वाचित सदस्यों की दशा में, जहां निर्वाचन आम चुनाव के लिए नियत दिन के पश्चात्बर्ती किसी भी दिन करवाए जाते हैं या करवाए जा सकेंगे, उस तारीख, जिसको आम चुनाव में विधान सभा के लिए निर्वाचित सदस्यों को शपथ दिलाई जाती है और वह तारीख जिसको, हिमवाधित क्षेत्र (असमरूप क्षेत्र) से निर्वाचित सदस्यों को शपथ दिलाई जाती है, की मध्यवर्ती अवधि की भी गणना की जाएगी।

स्पष्टीकरण.—पद “हिमवाधित क्षेत्र (असमरूप क्षेत्र)” से किन्नौर और लाहौल एवं स्पिति जिले तथा चम्बा जिला में तहसील पांगी और भरमौर अभिप्रत है।”

उद्देश्यों और कारणों का कथन

हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) अधिनियम, 1971 की धारा 6-अ (1) में यह उपबन्ध है कि जहाँ कोई व्यक्ति पांच वर्ष से अधिक अवधि के लिए विधान सभा का सदस्य रह चुका हो वहाँ उसे पांच वर्ष से अधिक, प्रत्येक वर्ष के लिए प्रतिभास एक सौ रुपये की अतिरिक्त पेंशन संदेता की जाती क्योंकि हिमवाधित क्षेत्र में सभाविष्ट निर्वाचन क्षेत्र से निर्वाचित किसी भूतपूर्व सदस्य को, जहाँ राज्य में आर्य चुनाव के लिए नियत दिन के पश्चात्पूर्ती किसी दिन को निर्वाचन करवाए जाते हैं, अधिनियम की धारा 6-ख की उप-धारा (1) के द्वितीय परन्तुक के उपबन्धों के अधीन अतिरिक्त पेंशन अर्जित करने के लिए पांच वर्ष की पूरी अवधि का लाभ नहीं मिलता है और उसे हिमवाधित क्षेत्र में सभाविष्ट निर्वाचन क्षेत्र से भिन्न निर्वाचन क्षेत्र से निर्वाचित सदस्य की तुलना में बराबर संख्या की अवधि के लिए पेंशन में कुछ परिमाण तक केवल मात्र इसलिए हानि उठानी पड़ सकती है क्योंकि उसके मामले में निर्वाचन प्रक्रिया देरी से पूरी होती है। इस प्रकार अतिरिक्त पेंशन को विनियमित करने वाले उक्त उपबन्धों में, इस विषयता/असंगति को दूर करने की आवश्यकता है। उक्त कारण से पूर्व निर्दिष्ट अधिनियम में संशोधन करना आवश्यक हुआ है।

यह विधेयक उक्त उद्देश्यों की पूर्ति के लिए है।

शान्ता कुमार,
मुख्य मन्त्री।

शिमला :

10-9-1991.

(वित्तीय जापन)

इस विधेयक का खण्ड 2, हिमवाधित क्षेत्र में सभाविष्ट निर्वाचन क्षेत्र से निर्वाचित हिमाचल प्रदेश विधान सभा के भूतपूर्व सदस्य के लिए पेंशन का उपबन्ध करता है, जहाँ राज्य में आम चुनाव के लिए नियत दिन से पश्चात्पूर्ती किसी दिन निर्वाचन करवाए जाते हैं। वर्तमानतः ऐसा सदस्य, अधिनियम की धारा 6-ख की उप-धारा (1) के परन्तुक के अधीन अतिरिक्त पेंशन अर्जित करने के लिए पूरे पांच वर्ष की अवधि का लाभ प्राप्त नहीं करता है। इस प्रकार प्रस्तावित उपबन्धों के अधिनियमित होने पर राजकोष से व्यय अन्तर्वर्तित होगा जिसका ठीक अनुमान नहीं लगाया जा सकता है।

प्रत्यायोजित विधान सम्बन्धी जापन

—शून्य—

संविधान के अनुच्छेद 207 के अधीन राज्यपाल की सिफारिश

नस्ति संख्या जी० ए० डी०(पी० ए०) 4(डी) 8/91

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश विधान सभा (सदस्यों के भत्ते और पेंशन) (द्वितीय संशोधन) विधेयक, 1991 की विषय-वस्तु के बारे में सूचित किए जाने के पश्चात् भारत के संविधान के अनुच्छेद 207 के अधीन उक्त विधेयक को विधान सभा में पुरःस्थापित करने और उस पर विचार करने की सिफारिश करते हैं।

AUTHORITATIVE ENGLISH TEXT

Bill No 17 of 1991.

THE HIMACHAL PRADESH LEGISLATIVE ASSEMBLY (ALLOWANCES AND PENSION OF MEMBERS) (SECOND AMENDMENT) BILL, 1991

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971 (Act No. 8 of 1971).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-second Year of the Republic of India, as follows:—

1. This Act may be called the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) (Second Amendment) Act, 1991.

Short title.

2. In section 6-B of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971—

Amendment of Section 6-B.

- (a) for the sign “.” appearing at the end of second proviso, the sign “:” shall be substituted;
- (b) after second proviso, the following third proviso shall be inserted, namely:—

“Provided further that while reckoning the period for the determination of the additional pension payable under the preceding proviso, in the case of members elected from the constituencies comprised of snow-bound area (non-synchronous area) where the elections are or may be conducted on any day subsequent to the day fixed for the general elections, the period intervening the date on which the oath is administered to the members elected to the Assembly in the general elections and the date on which the oath is administered to the members elected from the snow-bound area (non-synchronous area) shall also be counted.

Explanation.—The expression “snowbound area (non-synchronous area)” means the area comprising of Kinnaur and Lahaul and Spiti districts and Pangi and Bharmaur tehsils in Chamba district.”

STATEMENT OF OBJECTS AND REASONS

Sub-section (1) of section 6-B of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971, provides that where any person has served the Member of a Legislative Assembly for a period exceeding five years, there shall be paid to him an additional pension of Rs. 100/- per mensem for every year in excess of five years.

Since an ex-member elected from a constituency, comprising of snowbound areas, where the elections are conducted on any day subsequent to the day fixed for the general elections in the State, does not get the benefit of full term of five years for earning additional pension under the provisions of second proviso to sub-section (1) of section 6-B of the Act, and he may be a loser to some extent in pension for equal number of terms, as compared to a Member elected from a constituency other than a constituency comprising of snow-bound area simply because in his case the election process completed late. Thus, there is a need to remove this anomaly/disparity in the said provisions regulating the additional pension. It has, therefore, necessitated the amendments in the above referred Act.

The Bill seeks to achieve the aforesaid objectives.

SHIMLA:

SHANTA KUMAR,
Chief Minister.

The 10-9-1991.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to provide for pension to an ex-member of the Himachal Pradesh Legislative Assembly elected from a constituency comprising of snowbound areas where the elections are conducted on any day subsequent to the day fixed for the general elections in the State. At present such a member does not get the benefit of full term of five years for earning additional pension under the proviso of sub-section (1) of section 6-B of the Act. Thus, the enactment of the proposed provisions will involve an expenditure from the State ex-chequer which cannot be exactly quantified.

MEMORANDUM REGARDING DELEGATED LEGISLATION

-Nil-

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[File No. GAD (PA) 4 (D) 8/91]

The Governor of Himachal Pradesh, having been informed of the subject-matter of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) (Second Amendment) Bill, 1991, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

शिमला-4, 11 सितम्बर, 1991

संख्या 1-31/91-वि०स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, हिमाचल प्रदेश मनोरंजन शुल्क (द्वितीय संशोधन) विधेयक, 1991 (1991 का विधेयक संख्यांक 19) जो दिनांक 11-9-1991 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है।

लक्ष्मण सिंह,
सचिव।

हिमाचल प्रदेश मनोरंजन शुल्क (द्वितीय संशोधन) विधेयक, 1991

(विधान सभा में पुरःस्थापित रूप में)

हिमाचल प्रदेश मनोरंजन शुल्क अधिनियम, 1968 (1968 का 12) का और संशोधन करने के लिए विधेयक।

भारत गणराज्य के ब्यालीमवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो:—

1. इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश मनोरंजन शुल्क (द्वितीय संशोधन) अधिनियम, 1991 है।

1968 का
12

2. हिमाचल प्रदेश मनोरंजन शुल्क अधिनियम, 1968 (जिसे इसमें इसके पश्चात् मूल अधिनियम कहा गया है) की धारा 3 की उप-धारा (2) के स्थान पर निम्नलिखित उप-धारा रखी जाएगी, अर्थात्:—

धारा 3 का
संशोधन।

“(2) उप-धारा (1) और अधिनियम में टिकट से प्रवेश के सम्बन्ध में अन्तर्विष्ट अन्य उपबन्धों में किसी बात के होते हुए भी, सरकार, उम स्थान जिसमें मनोरंजन होता है, की धारिता और प्रवेश के लिए संदाय को ध्यान में रखने के पश्चात्, विहित रीति में, उप-धारा (1) के अधीन प्रभाय शुल्क के स्थान पर मनोरंजन के किसी वर्ग के लिए एकमुश्त मनोरंजन शुल्क स्वीकार कर सकेंगी और साठ व्यक्तियों तक की सीटों की धारिता रखने वाले किसी वीडियो-प्रदर्शन के स्वत्वधारी से भिन्न स्वत्वधारी से अग्रिम में प्रति मास वसूल कर सकेंगी :

परन्तु जो को संदाय पर प्रदर्शित करने और साठ व्यक्तियों तक की सीटों की धारिता रखने वाले, वीडियो-प्रदर्शन का स्वत्वधारी, मनोरंजन शुल्क को अग्रिम में और तीस हजार रुपये प्रति मास से अनधिक दर पर जैसी सरकार द्वारा विहित रीति में समय-समय पर विनिर्दिष्ट की जाए, संदत्त करेगा।”

3. मूल अधिनियम की धारा 7 के पश्चात्, निम्नलिखित नई धारा 7-क अन्तःस्थापित की जाएगी, अर्थात्:—

नई धारा
7-क का
अन्तःस्थापन।

“7-क आयुक्त और अन्य कराधायक प्राधिकारियों को सहायता.— इस अधिनियम के अधीन उनके कर्तव्यों के पालन में, आयुक्त, मनोरंजन कर अधिकारी और इस अधिनियम की धारा 7 के अधीन आयुक्त की सहायता करने को नियुक्त व्यक्तियों की सहायता करने के लिए, जब भी अपेक्षित हो, सभी पुलिस अधिकारी आवद्ध होंगे, और उस प्रयोजन के लिए उनको वही शक्तियाँ प्राप्त होंगी जो उन्हें साधारण पुलिस कर्तव्यों के निर्वहन के लिए प्राप्त हैं।”

4. मूल अधिनियम की धारा 16 की उप-धारा (2) के पश्चात्, निम्नलिखित नई उप-धाराएं (3) और (4) जोड़ी जाएंगी, अर्थात्:—

धारा 16 का
संशोधन।

“(3) यदि उप-धारा (1) में निर्दिष्ट किसी अधिकारी के पास यह विश्वास करने का युक्तियुक्त आधार हो कि कोई स्वत्वधारी इस अधिनियम के अधीन मनोरंजन शुल्क या अन्य दायों का अपवंचन करने का प्रयत्न कर रहा है तो, वह स्वत्वधारी के किसी कार्यालय, दुकान, गोदाम, जलयान, यान या कारबार के किसी अन्य स्थान या किसी इमारत, निवास-गृह, या स्थान जहाँ ऐसे अधिकारी को यह विश्वास करने का कारण हो कि स्वत्वधारी तत्समय, अपने कारबार से सम्बन्धित कोई बहियाँ, लेखे, रजिस्टर, दस्तावेज या माल रखता है या रख रहा है, की तलाशी ले सकेगा :

परन्तु निवासगृह में प्रवेश या तलाशी—

(i) सूर्यास्त के पश्चात् और सूर्योदय से पूर्व ;

(ii) आबकारी और कराधान अधिकारी की पंक्ति से नीचे के किसी अधिकारी द्वारा ; और

(iii) जिला मजिस्ट्रेट, जिसकी अधिकारिता में ऐसा गृह स्थित है, की पूर्ण मंजूरी अभिप्राप्त किए बिना ;

नहीं की जाएगी ।

(4) उप-धारा (3) द्वारा प्रदत्त शक्तियों के अन्तर्गत किसी सन्दूक या पात्र को, जिसमें स्वत्वधारी की कोई बहियाँ, लेखे, रजिस्टर या अन्य सुसंगत दस्तावेज रखे जा सकते हैं, खोलने और तलाशी लेने की शक्ति भी है ।”

नई धारा
16-क का
अन्तःस्थापन ।

5. मूल अधिनियम की धारा 16 के पश्चात्, निम्नलिखित नई धारा 16-क अन्तःस्थापित की जाएगी, अर्थात्:—

“16-क. वीडियो कैसेट रिकार्डर आदि को निरुद्ध रखने की शक्ति.—धारा 16 के अधीन प्राधिकृत कोई अधिकारी, यदि उसे यह विश्वास करने का कारण हो कि कोई स्वत्वधारी इस अधिनियम के अधीन अधिरोपित शुल्क या शास्ति, यदि कोई हो, के संदाय के बिना वीडियो प्रदर्शन चला रहा है या जहाँ स्वत्वधारी शुल्क या शास्ति, यदि कोई हो, संदत्त करने से इन्कार करता है अथवा उसके संदाय के सम्बन्ध में कोई सबूत प्रस्तुत करने में असफल रहता है, वीडियो कैसेट रिकार्डर या टेलीविजन या टेलीविजन से संलग्न यंत्र अथवा टेलीविजन के पर्दे पर फिल्में प्रदर्शित करने के लिए प्रयोग की जाने वाली मशीन या सिनेमा प्रोजेक्टर के सिवाय किसी अन्य यंत्र को जो किन्हीं अन्य साधनों के माध्यम से पर्दे पर फिल्में प्रदर्शित करते हैं, निरुद्ध कर सकेगा, और इस प्रयोजन के लिए इन वस्तुओं या माल की अस्थायी सुरक्षित अभिरक्षा के लिए कोई पग, जैसे वह ठीक समझे, उठा सकेगा या कायम करवा सकेगा :

परन्तु जैम ही शुल्क या शास्ति, यदि कोई हो, संदत्त कर दी गई हो तो निरुद्ध वीडियो कैसेट रिकार्डर या अन्य वस्तुओं को निर्मुक्त कर दिया जाएगा ।”

उद्देश्यों और कार्यों का कथन

हिमाचल प्रदेश मनोरंजन शुल्क अधिनियम, 1968 की धारा 3 का उप-धारा (2) के अधीन राज्य सरकार केवल वीडियो प्रदर्शन पर एकमुश्त मनोरंजन शुल्क उद्गृहीत कर सकती है किन्तु चलचित्र प्रदर्शनों और अन्य मनोरंजनों के सम्बन्ध में ऐसे कोई उपबन्ध विद्यमान नहीं हैं और इन पर शुल्क सरकार द्वारा जारी की गई आसजक स्टाम्पों से टिकटों को स्टाम्पित करके उद्गृहीत किया जाता है। इसलिए सुविधा के कारणों से इन मनोरंजनों पर टिकटों के आधार के स्थान पर एकमुश्त आधार पर शुल्क के संदाय के लिए मांग की जा रही है। इसलिए, शुल्क के संग्रहण को अधिक सरल बनाने के लिए, पूर्वोक्त अधिनियम की धारा 3 में संशोधन करना आवश्यक है। इसके अतिरिक्त, सिनेमा स्वामियों की अपने सिनेमाघरों को वीडियो घरों में संपरिवर्तित करने की प्रवृत्ति को आगे नियन्त्रित करने के लिए, वीडियो प्रदर्शन के बारे में सीटों की धारिता को साठ सीटों तक विहित करना भी आवश्यक है।

वीडियो प्रदर्शन के स्वत्वधारों प्रायः शुल्क का संदाय भी नहीं करते हैं और सरकारी राजस्व बकाया में रह जाता है। बकायों के जमा होने और समय पर बसूली को सुनिश्चित करने के लिए, वीडियो मशीनों के निरुद्ध करने के लिए उपबन्ध करना भी आवश्यक है। इस प्रयोजन के लिए, पुलिस सहायता ली जानी भी आवश्यक हो सकती है। तदनुसार, इस निमित्त वीडियो मशीनों को निरुद्ध करने और अनेकित पुलिस सहायता सुनिश्चित करने सम्बन्धी शक्तियों के उपबन्धों को सम्मिलित करना आवश्यक है।

यह विधेयक पूर्वोक्त उद्देश्य की पूर्ति के लिए है।

नगीन चन्द्र पाल,
प्रभारी मन्त्री।

शिमला :

11 सितम्बर, 1991.

वित्तीय ज्ञापन

यह विधेयक नए कर उद्गृहीत करने का प्रस्ताव नहीं करता है। विधेयक के उपबन्धों को अधिनियमित किए जाने पर उन्हें विद्यमान सरकारी तन्त्र के माध्यम से प्रवर्तित किया जाएगा। अतः राज्य सरकार को कोई अतिरिक्त आय नहीं होगी और न ही कोई अतिरिक्त व्यय अन्तर्वर्तित होगा।

प्रत्यायोजित विधान सम्बन्धी ज्ञापन

विधेयक का खण्ड 2 मनोरंजन शुल्क की दर और संदाय की रीति को विनिर्दिष्ट करने के लिए, राज्य सरकार को प्राधिकृत करने का प्रस्ताव करता है। यह प्रत्यायोजन आवश्यक और सामान्य स्वरूप का है।

संविधान के अनुच्छेद 207 के अधीन राज्यपाल की सिफारिशें

[आबकारी और कराधान विभाग नस्ति सं० ई० एक्स० एन०-एफ० (15)-1/89]

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश मनोरंजन शुल्क (द्वितीय संशोधन) विधेयक, 1991 की विषय-वस्तु के बारे में सूचित किए जाने के पश्चात्, भारत के संविधान के अनुच्छेद 207 के अधीन उक्त विधेयक को विधान सभा में पुरःस्थापित करने और उस पर विचार करने की सिफारिश करते हैं।

AUTHORITATIVE ENGLISH TEXT

Bill No. 19 of 1991.

THE HIMACHAL PRADESH ENTERTAINMENTS DUTY (SECOND AMENDMENT) BILL, 1991

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Entertainments Duty Act, 1968 (Act No. 12 of 1968).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-second Year of the Republic of India as follows:—

1. This Act may be called the Himachal Pradesh Entertainments Duty (Second Amendment) Act, 1991.

Short title.

12 of 1968.

2. For sub-section (2) of section 3 of the Himachal Pradesh Entertainments Duty Act, 1968 (hereinafter called the principal Act) the following shall be substituted, namely:—

Amendment of section 3.

“(2) Notwithstanding anything contained in sub-section (1) and other provisions in relation to admission by tickets contained in the Act, the Government may, after taking into consideration the capacity of the place in which the entertainment is held and the payment for admission, accept, in the prescribed manner, lump-sum entertainment duty for any class of entertainment in lieu of the duty chargeable under sub-section (1) and recover the same in advance per month from the proprietor other than the proprietor of a video exhibition having seating capacity upto sixty persons:

Provided that the proprietor of a video exhibition, exhibiting shows on payment and having seating capacity upto sixty persons, shall pay entertainment duty in advance and at a rate not exceeding rupees 30,000 per month as may, in the manner prescribed, be specified by the Government from time to time.”

3. After section 7 of the principal Act, the following new section 7-A shall be inserted, namely:—

Insertion of new section 7-A.

“7-A. *Assistance to Commissioner and other taxing authorities.*—All police officers shall be bound to assist the Commissioner, the Entertainment Tax Officers and other persons appointed to assist the Commissioner under section 7 of this Act, when required, in the performance of their duties under this Act, and, for that purpose they shall have the same powers which they have in the discharge of their ordinary police duties.”

4. After sub-section (2) of section 16 of the principal Act, the following new sub-sections (3) and (4) shall be added, namely:—

Amendment of section 16.

“(3) If any officer referred to in sub-section (1) has reasonable grounds to believe that any proprietor is trying to evade entertainment duty

or other dues under this Act, he may search any office, shop, godown, vessel, vehicle, or any other place of business of the proprietor or any building, dwelling house, or place where such officer has reason to believe that the proprietor keeps or is, for the time being, keeping any books, accounts, registers, documents or goods relating to his business:

Provided that no entry or search in the dwelling house shall be made—

- (i) after the sunset and before the sunrise;
- (ii) by an officer below the rank of an Excise and Taxation Officer; and
- (iii) without obtaining the sanction of the District Magistrate within whose jurisdiction such house is situated.

(4) The powers conferred by sub-section (3) shall include the power to open and search any box or receptacle in which any books, accounts, registers or other relevant documents of the proprietor may be contained."

Insertion of
new section
16-A.

5. After section 16 of the principal Act, the following new section 16-A shall be inserted, namely:—

"16-A. *Power to detain video cassette recorders, etc.*—Any officer authorised under section 16 may, if he has reasons to believe that any proprietor is running a video exhibition without payment of duty or penalty, if any, imposed under this Act or where the proprietor refuses to pay the duty or penalty, if any, or fails to produce any proof regarding the payment thereof, detain the video cassette recorder or television or apparatus attached to television or machine used for transmitting the films to the television screen or any other apparatus which transmits films on screen through any other means except a cinema projector, and for this purpose take or cause to be taken any steps as he may consider proper for the temporary safe custody of these articles or goods:

Provided that the video cassette recorder or other articles detained shall be released as soon as the duty or penalty, if any, has been paid."

STATEMENT OF OBJECTS AND REASONS

Under sub-section (2) of section 3 of the Himachal Pradesh Entertainments Duty Act, 1968, the State Government can levy lump-sum entertainments duty only on video exhibitions but such provisions do not exist in relation to cinematograph exhibitions and other entertainments and duty on these is levied by stamping tickets with adhesive stamps issued by the Government. For reasons of convenience, there is demand for payment of duty on these entertainments on lump-sum basis instead of on the basis of tickets. Therefore, in order to make the collection of duty easier, it is essential to amend section 3 of the aforesaid Act. Besides this, in order to further curb the tendency of cinema owners to convert their cinema halls into video halls, it is essential to prescribe the seating capacity in respect of the video exhibitions at sixty seats.

Further, the proprietor of video exhibitions frequently do not make payment of duty and the Government revenue goes into arrears. In order to prevent piling up of arrears and to ensure timely recovery, it is essential to provide for detention of video machines. For this purpose, police assistance may also become necessary. Accordingly, it is essential to incorporate the provisions relating to powers to detain video machines and to ensure requisite police assistance in this behalf.

This Bill seeks to achieve the aforesaid objectives.

NAGIN CHANDER PAL,
Minister-in-charge.

SHIMLA:

The 11th September, 1991.

FINANCIAL MEMORANDUM

The Bill does not propose to levy fresh taxes. The provisions of the Bill when enacted, are to be enforced through the existing Government machinery. As such there will be no extra income to the State Government and no additional expenditure will be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill proposes to authorise the State Government to specify the rate and manner of payment of entertainment duty. This delegation is essential and normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Excise and Taxation Department File No. EXN-F (15)-1/89]

The Governor, Himachal Pradesh, after having been informed of the subject-matter of the Himachal Pradesh Entertainments Duty (Second Amendment) Bill, 1991, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the said Bill in the State Legislative Assembly.

शिमला-4, 11 सितम्बर, 1991

सं० 1-32/91-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, हिमाचल प्रदेश माधारण विनय कर (मंशोधन और विधिमाम्यकरण) विधेयक, 1991 (1991 का विधेयक संख्यांक 28) जो दिनांक 11-9-91 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है।

लक्ष्मण सिंह,
सचिव।

1991 का विशेष संख्यांक 20.

हिमाचल प्रदेश साधारण विक्रय कर (संशोधन और विधिमाम्यकरण) विधेयक, 1991

(विधान सभा में पुरःस्थापित रूप में)

हिमाचल प्रदेश साधारण विक्रय कर अधिनियम, 1968 (1968 का 24) का और संशोधन करने और प्रथम अप्रैल, 1991 से 15 जून, 1991 तक की अवधि के दौरान किए गए कतिपय संशोधनों पर कर के उद्ग्रहण और संग्रहण को विधिमाम्य बनाने के लिए विधेयक।

भारत गणराज्य के ब्यालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश साधारण विक्रय कर (संशोधन संक्षिप्त नाम। और विधिमाम्यकरण) अधिनियम, 1991 है।

1968 का 2. हिमाचल प्रदेश साधारण विक्रय कर अधिनियम, 1968 (जिसे इसमें इसका धारा 4 का पश्चात् मूल अधिनियम कहा गया है) की धारा 4 की उप-धारा (6) के खण्ड (c) में शब्दों, और चिन्ह “tandoor,” “loh,” “dhaba,” “halwai shop,” और “Indian” का लोप किया जाएगा। धारा 4 का संशोधन।

3. मूल अधिनियम की धारा 12 की उप-धारा (4) में,—

(क) शब्दों “District Excise and Taxation Officer” जहाँ कहीं भी ये आए हैं, के स्थान पर “Assistant Excise and Taxation Commissioner or Excise and Taxation officer-in-charge of the District” शब्द रखे जाएँगे ;

(ख) प्रथम परन्तुक में, शब्दों “local Scheduled Bank” के स्थान पर “local branch of a Scheduled Bank” शब्द रखे जाएँगे और इस प्रकार संशोधित प्रथम परन्तुक के पश्चात् कितु द्वितीय परन्तुक से पूर्व, निम्नलिखित नया परन्तुक अन्तःस्थापित किया जाएगा, अर्थात् :—

“Provided further that where the payment is made through a crossed cheque such crossed cheque must be delivered in the office of the assessing authority concerned, not less than ten clear days before the expiry of the due date prescribed under sub-section(3) for filing the return, and the dealer shall be deemed to have made the payment on the date on which such crossed cheque, after its presentation in the bank, is actually credited into the Government account and necessary receipt is issued by the bank in favour of the dealer:”

4. मूल अधिनियम की धारा 12 के पश्चात् निम्नलिखित धारा 12-A अन्तःस्थापित की जाएगी, अर्थात् :— धारा 12-A का अन्तःस्थापन।

“12-A. Tax deduction from the bills/invoices of the works contractors.—

(1) Notwithstanding anything to the contrary contained in section 13, every person making any payment or discharge of any

liability on account of valuable consideration payable for the transfer of property in goods, whether as goods or in some other form, involved in the execution of works contract shall deduct an amount not exceeding four per centum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractor as payable by the person :

Provided that no such payment or discharge of any bill raised by the works contractor shall be made without deduction:

Provided further that if the State Government is satisfied that it is necessary to do so in the interest of the State revenue it may notify the names/posts of such persons who shall be competent persons to make such deduction:

(2) The deduction referred to in sub-section (1) shall be made in the manner which may be prescribed.

(3) The payment of such deduction into the Government Treasury shall be the responsibility of the person making such deduction.

(4) The person making such deduction shall issue deduction certificate in the prescribed manner to the person or dealer from whose bill or invoice, such deduction has been made.

(5) If any person contravenes any or all of the provisions of sub-sections (1), (3) and (4), the prescribed authority shall, after giving an opportunity of being heard, by an order in writing, direct that such person shall pay by way of penalty, a sum not exceeding twice the amount of tax deductible under sub-section (1).

(6) The provisions of sections 16 and 16-A for recovery of any amount of tax due from a dealer shall, *mutatis mutandis*, apply for recovery of any amount of tax, deducted and/or any penalty imposed but not deposited under this section."

धारा
16-A का
अन्तःस्थापन ।

5. मूल अधिनियम की धारा 16 के पश्चात्, निम्नलिखित धारा 16-A अन्तःस्थापित की जाएगी, अर्थात् :—

"16-A. *Special mode of recovery.*—(1) Notwithstanding anything contained in section 16 or any law or contract to the contrary, Commissioner or any officer other than an Excise and Taxation Inspector, appointed under section 3 to assist the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be sent to the dealer at his last address known to the officer issuing the notice, require,—

- (a) any person from whom any amount is due or may become due to a dealer who has failed to comply with a notice of demand for any amount due under this Act,
- (b) any person who holds or may subsequently hold any money for or on account of such dealer,

to pay into the Government treasury in the manner specified in the notice issued under this sub-section, either forthwith or upon the money becoming due or being held, or at or within the time specified in the notice (not being before the money becomes due or it is held), so much of the money as is sufficient to pay the amount due from the dealer in respect of the arrears of the tax, interest and penalty under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.—For the purposes of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claim, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting.

(2) The officer issuing a notice under sub-section (1) may at any time, or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the treasury receipt for such payment shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer after service on him of the notice issued under sub-section (1) shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax, interest and penalty, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1), proves to the satisfaction of the Officer who issued the notice that the sum demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, then nothing contained in this section shall be deemed to require such person to pay into the Government treasury any such money or part thereof, as the case may be.

(6) Any amount of money which a person is required to pay under sub-section (1), or for which he is personally liable to the State Government under sub-section (4) shall, if it remains unpaid, be recoverable as an arrear of land revenue.

(7) The provisions of this section shall be without prejudice to any action that may be taken for the recovery of the arrears of tax, interest and penalty, if any, due from the dealer."

6. मूल अधिनियम की धारा 30 की उप-धारा (5) में, शब्द "tax" जहां कहीं भी आया है, "tax (including interest payable)" शब्द, और कोष्ठक रखे जाएंगे। धारा 30 का संशोधन।

7. मूल अधिनियम की धारा 35 के स्थान पर, निम्नलिखित धारा 35 रखी जाएगी और तत्पश्चात्, निम्नलिखित धारा 35-A और धारा 35-B अन्तःस्थापित की धारा 35 का प्रतिस्थापन।

जाएगी, अर्थात् :—

और धारा
35-A और
धारा 35-B
का अन्तः-
स्थापन।

“35. *Offences and penalties.*—(1) Any person who—

- (a) wilfully acts in contravention of the provisions of this Act or the rules made thereunder; or
- (b) furnishes a certificate under sub-section (2) of section 6, which he knows or has reason to believe it to be false; or
- (c) being a registered dealer, falsely represents when purchasing any class of goods for use by him in the manufacture of any goods for sale, that goods of such class are covered by his certificate of registration; or
- (d) not being a registered dealer, falsely represents when purchasing goods in Himachal Pradesh that he is a registered dealer; or
- (e) after purchasing any goods for any of the purposes specified in the Act, fails, without reasonable excuse, to make use of the goods for any such purpose; or
- (f) has in his possession any form issued under the Act on payment by the Government, which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder; or
- (g) prevents inspection or examination of books, documents and accounts or wilfully fails to produce such books, documents and accounts mentioned in section 20; or
- (h) fails to carry with him any of the records or documents specified in section 22; or
- (i) makes any statement or declaration in any of the documents specified in section 22 or section 22-A, as the case may be, which statement or declaration he knows or, has reasons to believe to be false; or
- (j) in any way is knowingly concerned in any fraudulent evasion or attempt at evasion or abetment of evasion of any tax payable in respect of the sale or purchase of any goods under this Act; or
- (k) if he is a driver or any other person in charge of goods vehicle or vessel or an owner of the goods refuses on demand by the officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Inspector, to give his name and address or the name and address of the owner of the goods vehicle or of the consignor or consignee of the goods or gives any name and address of any of these persons which he knows or has reason to believe to be false; or
- (l) aids or abets any person in the commission of any offence specified in this sub-section;

he shall, without prejudice to the recovery of any tax or interest or penalty which may be due from him, be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

(2) Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder, or any order or direction made or given thereunder, shall, if no other penalty is provided either under sub-section (1) of this section or under any other provisions of this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees, and where such contravention or failure is continuing one, to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

(3) Any officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Officer, appointed under sub-section (1) of section 3 or such other officer as the State Government may, by notification, appoint, may after affording to the person concerned a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (2):

Provided that the officer-in-charge of the check post or a barrier shall exercise such powers only at such check posts or barriers.

35-A. Imposition of penalty in lieu of prosecution.—If any person specified in sub-section (1) of section 35 is guilty of any offence under that sub-section, any officer incharge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Officer appointed under sub-section (1) of section 3, or such other officer as the State Government may, by notification, appoint, within his jurisdiction, may, after affording to the person concerned a reasonable opportunity of being heard, by order, in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods, if the sale had been a sale falling within this Act:

Provided that the penalty in case of non-taxable goods shall be calculated as if such goods were liable to tax at the rate of ten paise in a rupee:

Provided further that the penalty for offences under sub-section (7) of section 12 shall be imposed under the same sub-section:

Provided further that no prosecution for an offence under sub-section (1) of section 35 shall be instituted in respect of the same facts on which a penalty has been imposed under this section or sub-section (7) of section 12.

35-B. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with previous sanction of the Government or of such officer as may be authorised by a notification published in Official Gazette and no Court inferior to that of a Magistrate of the first class shall try any such offence.

(2) All offences punishable under sub-section (1) of section 35 of this Act shall be cognizable and bailable.”.

8. मूल अधिनियम की धारा 40 की उप-धारा (2) में,—

(क) खण्ड (h) के पश्चात् निम्नलिखित खण्ड (hh) जोड़ा जाएगा,

अर्थात् :—

“(hh) the manner in which deductions are to be made and the deduction certificate is to be issued under sub-sections (1) and (4) of section 12-A;” and

धारा 40 का संशोधन

(ख) खण्ड (r) के पश्चात् निम्नलिखित खण्ड (rr) और खण्ड (rrr) जोड़े जाएंगे, अर्थात्:—

“(rr) the form and the manner in which the certificate under section 42-B is to be furnished;

(rrr) the restrictions and conditions subject to which and the manner in which the set off under sub-section (2) of section 42-C is to be granted;”.

धारा 42 का प्रतिस्थापन । 9. मूल अधिनियम की धारा 42 के स्थान पर निम्नलिखित धारा प्रतिस्थापित की जाएगी, अर्थात्:—

“42. *Powers to exempt.*—(1) The Government, if satisfied that it is necessary or expedient so to do in the interest of cottage industries or small scale industries may, by notification, exempt either wholly or to such extent only as may be specified in the said notification any class of co-operative societies or persons from the payment of tax leviable on the sale of goods manufactured by such societies/or persons subject to such conditions as may specified in such notification.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before the State Legislature.”

धाराओं 42-A, 42-B, 42-C और 42-D का अन्तःस्थापित की जाएगी, अर्थात्:—

“42-A *Special provisions relating to deferred payment of tax by industrial units.*—(1) Notwithstanding anything contained in any other provisions of this Act, if the Government is of the opinion that with a view to provide incentives to entrepreneurs setting up new industrial units in the State for manufacturing goods for sale, it is necessary or expedient in the public interest so to do, it may, under a scheme notified in this behalf under this Act and subject to such restrictions and conditions as may be specified in such scheme, provide for deferred payment of tax payable under section 12 by such entrepreneur who is registered as a dealer under this Act.

(2) Subject to the provisions of sub-section (1), the entrepreneur referred to therein, if eligible for grant of facility of deferred payment of tax under the scheme notified under sub-section (1) may make deferred payment of tax payable on the sale of goods manufactured by him.

42-B. *Concessional rate of tax on certain raw materials.*—Notwithstanding anything contained in this Act, but subject to such restrictions and conditions as may be specified, the State Government may, if it is expedient in the public interest so to do, by notification, exempt wholly or fix a concessional rate of tax, on the sale, to an entrepreneur, of goods, specified in his certificate of registration, for use by him as raw material in the manufacture in

Himachal Pradesh of any goods—

- (a) for sale in the State of Himachal Pradesh ; or
- (b) for sale in the course of inter-state trade or commerce :

Provided that the tax on such sales shall be levied at full rates fixed under section 6 unless the dealer making the sale to such entrepreneur furnishes to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the eligible entrepreneur.

42-C. Set off of tax in respect of tax paid goods, in certain circumstances.—

- (1) Subject to such restrictions and conditions as may be prescribed, a set off, as provided in sub-section (2), shall be granted in such manner as may be prescribed, to a registered dealer in respect of tax paid goods in the circumstances mentioned in sub-section (2).
- (2) When the registered dealer purchases any goods, which have suffered tax either under sub-section (2) of section 6 at full rates or under section 42 or section 42-B at the concessional rates, for use of such goods as raw-material in the manufacture in Himachal Pradesh of any goods for sale, he shall be entitled to a set off of tax equal to the difference between the aggregate liability on the sale of final product minus the amount of tax already paid by the selling dealer.

42-D. Penalty for utilisation of goods for other purposes.—Where any goods purchased by a registered dealer either under sub-section (1) of section 42 or sub-section (1) of section 42-B, at concessional rates, for use by him in the manufacture of any goods in Himachal Pradesh, other than goods declared tax free under section 7—

- (a) for sale in the State of Himachal Pradesh ; or
- (b) for sale in the course of inter-State trade or commerce, are utilised by him for any purpose other than those specified in clause (a) or (b), such dealer shall be liable to pay as penalty, such amount not less than the difference between the amount of tax on the sale of such goods at the full rate applicable thereto under section 6 and the amount of tax payable under sub-section (1) of section 42 or sub-section (1) of section 42-B, but not exceeding one and a half times the amount of tax payable at such full rate, as any officer appointed under sub-section (1) of section 3 may, by order, impose :

Provided that no order imposing such penalty shall be passed under this section unless such dealer has been given a reasonable opportunity of being heard."

11. (1) The provisions of section 6 of the principal Act, as amended by section 4 of the Himachal Pradesh General Sales Tax (Amendment) Act, 1991 shall be deemed to be and to have always been valid and effective from the 1st day of April, 1991 irrespective of the fact that the said Act, after having been passed by the State Legislature on 20th day of March, 1991,

विधिमान्य-
करण और
छूट ।

has been assented to on 18th day of April, 1991 and published in the Official Gazette on 20th day of April, 1991, and accordingly—

- (a) the tax leviable in pursuance of the notification No. EXN-F(11)-1/91 dated the 2nd May, 1991 published in the extra-ordinary issue of the Official Gazette, dated 3rd May, 1991 and notification No. EXN-F(11)-1/91, dated 13th June, 1991 published in the extra-ordinary issue of the Official Gazette, dated the 15th June, 1991 at the rates of 8, 11, 7.5, 30 and 3.5 paise in a rupee shall be deemed to be and shall be deemed always to have been levied with effect from 1st day of April, 1991; and
- (b) the tax leviable in pursuance of notification No. EXN-F(11)1/91, dated the 13th June, 1991 published in the extra-ordinary issue of the Official Gazette, dated the 15th June, 1991 at the rate of 2.5% for the first five years and at the rate of 4.5% for the next five years in respect of goods leviable to general sales tax at the rate of 8% and in case of goods leviable to general sales tax upto the rate of 11%, the rate of 4% for the first five years and 6% for the next five years shall be deemed to be and shall be deemed always to have been levied with effect from 1st day of April, 1991;

and notwithstanding any judgment or decree or order of any court, tribunal or authority to the contrary no notification which was issued under section 6 of the Himachal Pradesh General Sales Tax Act, 1968 as amended by the Himachal Pradesh General Sales Tax (Amendment) Act, 1991, before the commencement of this Act and which levied or authorised the levy of or purported to levy or authorise the levy of the tax (hereafter in this section referred to as the aforesaid tax) at enhanced rate shall be deemed to be invalid or ever to have been invalid on the ground merely that the authority issuing such notifications did not have competence to issue such notification, and accordingly—

24 of 1968
5 of 1991

- (i) all the aforesaid taxes levied or collected or purporting to have been levied or collected under section 6 of the principal Act before the commencement of this Act shall be deemed and be deemed always to have been validly levied or collected in accordance with law;
 - (ii) no suit or other proceeding shall be maintained or continued in any court or before any tribunal or authority for the refund of, and no enforcement shall be made by any court, tribunal or authority of any decree or order directing the refund of any such aforesaid tax which has been collected;
 - (iii) recoveries shall be made in accordance with the provisions of said section 6 and the notifications of all amounts which would have been collected thereunder as such aforesaid tax if this section had been in force at all material times.
- (2) Notwithstanding anything contained in sub-section (1)—
- (a) where any sale of goods taxable at the rates specified in the notification No. EXN-F(11)-1/91, dated 2nd May, 1991 referred to in clause (a) of sub-section (1) of this section has been affected during the period between the 1st day of April, 1991 and 3rd day of May, 1991;

- (b) where any purchase of resin taxable at the rate of 8 paise in a rupee specified in the notification No. EXN-F(11)-1/91, dated 13th June, 1991, referred in clause (a) of sub-section (1) of this section has been affected during the period between the 1st day of April, 1991 and 15th day of June, 1991;
- (c) where any sale of goods taxable at the rates specified in the notification No. EXN-F(11)-1/91, dated 13th June, 1991 referred to in clause (b) of sub-section (1) of this section has been affected between 1st day of April, 1991 and 15th day of June, 1991;

the dealer affecting such sale or affecting purchase of resin shall pay the tax on the taxable turnover at the basic rates enhanced by 10% of the respective rates prescribed prior to the 1st day of April, 1991 for various classes of goods and for goods manufactured by small scale industrial units.

(3) For the removal of doubts it is hereby declared that—

- (a) nothing in this section shall be construed as preventing any person—
 - (i) from questioning in accordance with the provisions referred to in this section, the assessment, reassessment, levy or collection of the aforesaid tax; or
 - (ii) from claiming refund of the aforesaid tax paid by him in excess of the amount due from him under any such provision; and
- (b) no act or omission on the part of any person, before the commencement of this Act, shall be punishable as an offence which would not have been so punishable if this Act had not come into force.

उद्देश्यों और कारणों का कथन

साधारण व्यौहारियों के लिए कराधेय मात्रा को प्रति वर्ष 3,00,000 रुपये तक बढ़ा दिया गया है। तन्दूर, लोह, ढाबा और हनुवाई की दुकान चलाने का कारबार करने वाले व्यौहारियों को साधारण व्यौहारियों की बराबरी पर लाने के लिए कराधेय मात्रा सीमा को 1,00,000 रुपये से 3,00,000 रुपये तक बढ़ाने का प्रस्ताव है। आगे रेखांकित चर्कों द्वारा संदाय की पद्धति देय कर के संदाय को विलम्बित करती है और इसे ठीक करना अपेक्षित है ताकि रेखांकित चर्क देने के बहाने पर, कर संदायों को नियत तारीखों से परे विलम्बित नहीं किया जाए। यद्यपि संविदा के संक्रमण में बेचे गए माल पर विक्रय कर 1985 से ही उद्घाट्य है, फिर भी इसके कार्यान्वयन में अपेक्षित प्रगति नहीं हो सकी है, जिसके कारण निर्माण ठेकेदारों के बिलों से विक्रय कर की कटौती के लिए उपबन्ध अधिनियमित करना आवश्यक हो गया है। इस पद्धति को प्रभावशाली बनाने के लिए, वसूली का विशेष ढंग खोजना भी आवश्यक हो गया है ताकि सरकार को देय कर सुनिश्चित किया जा सके। मिथ्या दस्तावेज देने के रूप में राजस्व विरोधी और सरकारी राजस्व को कपट वंचित करने के क्रिया-कलाप, ऐसे अवध क्रियाकलापों के लिए तत्स्थानी दायित्व के अभाव में पनप रहे हैं। इस लिए कपटपूर्ण क्रिया-कलापों, राज्य के राजस्व हितों को प्रतिकूल रूप से प्रभावित करने वाले मिथ्या दस्तावेज देने की परिपाटी को रोकने और अधिनियम के उपबन्धों को अधिक प्रभावशाली और भरोसेपूर बनाने के लिए शास्तियां विहित करना भी आवश्यक हो गया है। उद्योगों के सम्बन्ध में, कर के आस्थगित संदाय, कर की रियायती दर और औद्योगिक इकाइयों द्वारा कच्चे माल के विक्रय और ऐसे कच्चे माल के उपयोग पर संदत्त कर का मुजरा करने के लिए पर्याप्त समर्थन बनाने वाले उपबन्ध बनाना आवश्यक है। इसलिए हिमाचल प्रदेश साधारण विक्रय कर अधिनियम, 1968 में संशोधन करना आवश्यक हो गया है।

यह विधेयक पूर्वोक्त उद्देश्य की पूर्ति के लिए है।

नगोन चन्द्र पाल,
प्रभारी मन्त्री।

शिमला :

11 सितम्बर, 1991.

बिस्तीय ज्ञापन

इस विधेयक के खण्ड 2 में, तन्दूर, लोह, ढाबा और हलवाई की दुकान चलाने वाले व्यौहारियों की कराधेय मात्रा को 1,00,000 रुपये से 3,00,000 रुपये प्रति वर्ष तक बढ़ाने का प्रस्ताव है जिसके परिणाम स्वरूप राज कोष को प्रति वर्ष लगभग 15 लाख रुपये की आवर्ती हानि होगी।

प्रत्यायोजित विधान सम्बंधी ज्ञापन

विधेयक के खण्ड 8 के साथ पठित खण्ड 4 और खण्ड 10 में, काटे गए कर के बारे में रीति, जिसमें ठेकेदारों के संकर्म बिलों से कटौती करने और कटौती प्रमाण-पत्र जारी किए जाने हैं, विहित करने, प्ररूप और रीति जिसमें धारा 42-B के अधीन रियायती दरों पर कर के संदाय के बारे में प्रमाण-पत्र दिए जाने हैं और वह निर्बन्धन और शर्तें विहित करना जिनके अधीन रहते हुए और रीति जिसमें धारा 42-C के अधीन मुजरा दिया जाना है, के लिए राज्य सरकार को नियम बनाने के लिए सशक्त करने का उध्वन्ध करते हैं। इस प्रकार बनाए गए नियम विधान सभा के पटल पर रखे जाएंगे। प्रस्तावित प्रत्यायोजन आवश्यक और सामान्य स्वरूप का है।

भारत के संविधान के अनुच्छेद 207 के अधीन राज्यपाल की सिफारिशें

[नस्ति संख्या इ-एक्स-एन-एफ (11)-1/91-पार्ट]

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश सामाधारण विक्रय कर (संशोधन और विधिमान्यकरण) विधेयक, 1991 की विषय वस्तु के बारे में सूचित किए जाने के पश्चात् भारत के संविधान के अनुच्छेद 207 के अधीन विधेयक को विधान सभा में पुरःस्थापित करने और उस पर विचार करने की सिफारिश करते हैं।

AUTHORITATIVE ENGLISH TEXT

Bill No. 20 of 1991.

THE HIMACHAL PRADESH GENERAL SALES TAX (AMENDMENT AND VALIDATION) BILL, 1991

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968) and to validate the levy and collection of tax on certain transactions during the period from the 1st day of April, 1991 to the 15th day of June, 1991.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-second Year of the Republic of India as follows :—

1. This Act may be called the Himachal Pradesh General Sales Tax (Amendment and Validation) Act, 1991.

Short title.

2. In clause (c) of sub-section (6) of section 4 of the Himachal Pradesh General Sales Tax Act, 1968 (hereinafter referred to as the principal Act), the words "tandoor", "lohi", "dhaba", "halwai shop" and "Indian" shall be omitted.

24 of 1968

Amendment of section 4.

3. In sub-section (4) of section 12 of the principal Act—

Amendment of section 12.

- (a) for the words "District Excise and Taxation Officer" wherever these occur, the words "Assistant Excise and Taxation Commissioner or Excise and Taxation Officer In-charge of the District" shall be substituted;
- (b) in the first proviso, for the words "local Scheduled Bank", the words "local branch of a Scheduled Bank" shall be substituted and after the first proviso so amended, but before the second proviso, the following new proviso shall be inserted, namely :—

"Provided further that where the payment is made through a crossed cheque, such crossed cheque must be delivered in the office of the assessing authority concerned, not less than ten clear days before the expiry of the due date prescribed under sub-section (3) for filing the return, and the dealer shall be deemed to have made the payment on the date on which such crossed cheque, after its presentation in the bank, is actually credited into the Government account and necessary receipt is issued by the bank in favour of the dealer."

4. After section 12 of the principal Act, the following section 12-A shall be inserted, namely :—

Insertion of section 12-A.

"12-A. Tax deduction from the bills/invoices of the works contractors.—

(1) Notwithstanding anything to the contrary contained in section 13, every person making any payment or discharge of any liability on account of valuable consideration payable for the transfer of property in goods, whether as goods or in some other form,

involved in the execution of works contract shall deduct an amount not exceeding four per centum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractor as payable by the person:

Provided that no such payment or discharge of any bill raised by the works contractor shall be made without deduction :

Provided further that if the State Government is satisfied that it is necessary to do so in the interest of the State revenue, it may notify the names/posts of such persons who shall be competent persons to make such deduction.

- (2) The deduction referred to in sub-section (1) shall be made in the manner which may be prescribed.
- (3) The payment of such deduction into the Government treasury shall be the responsibility of the person making such deduction.
- (4) The person making such deduction shall issue deduction certificate in the prescribed manner to the person or dealer from whose bill or invoice such deduction has been made.
- (5) If any person contravenes any or all of the provisions of sub-sections (1), (3) and (4), the prescribed authority shall, after giving an opportunity of being heard, by an order in writing, direct that such person shall pay by way of penalty, a sum not exceeding twice the amount of tax deductible under sub-section (1).
- (6). The provisions of sections 16 and 16-A for recovery of any amount of tax due from a dealer shall *mutatis mutandis* apply for recovery of any amount of tax, deducted and/or any penalty imposed but not deposited under this section.

Insertion of
section
16-A.

5. After section 16 of the principal Act, the following section 16-A shall be inserted, namely :—

“16-A. *Special mode of recovery*.—(1) Notwithstanding anything contained in section 16 or any law or contract to the contrary, Commissioner or any officer other than an Excise and Taxation Inspector, appointed under section 3 to assist the Commissioner, may at any time or from time to time, by notice in writing, a copy of which shall be sent to the dealer at his last address known to the officer issuing the notice, require—

- (a) any person from whom any amount is due or may become due to a dealer who has failed to comply with a notice of demand for any amount due under this Act;
- (b) any person who holds or may subsequently hold any money for or on account of such dealer,

to pay into the Government treasury in the manner specified in the notice issued under this sub-section, either forthwith or upon the money becoming due or being held, or at or within the time specified in the notice (not being before the money becomes due or it is held), so much of the money as is sufficient to pay the amount due from the dealer in respect of the arrears of

tax, interest and penalty under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.—For the purposes of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claim, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting.

(2) The officer issuing a notice under sub-section (1) may at any time, or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the treasury receipt for such payment shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer after service on him of the notice issued under sub-section (1) shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax, interest and penalty, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1), proves to the satisfaction of the officer who issued the notice that the sum demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, then nothing contained in this section shall be deemed to require such person to pay into the Government treasury any such money or part thereof, as the case may be.

(6) Any amount of money which a person is required to pay under sub-section (1), or for which he is personally liable to the State Government under sub-section (4) shall, if it remains unpaid, be recoverable as an arrear of land revenue.

(7) The provisions of this section shall be without prejudice to any action that may be taken for the recovery of the arrears of tax, interest and penalty, if any, due from the dealer.

6. In sub-section (5) of section 30 of the principal Act, for the word "tax" wherever it occurs, the words and brackets "tax (including interest payable)" shall be substituted.

Amendment
of section
30.

7. For section 35 of the principal Act, the following section 35 shall be substituted and thereafter following sections 35-A and 35-B shall be inserted, namely:—

Substitution
of section
35 and in-
sertion of
sections
35-A and
35-B.

"35. *Offences and penalties.*—(1) Any person who—

- (a) wilfully acts in contravention of the provisions of this Act or the rules made thereunder; or
- (b) furnishes a certificate under sub-section (2) of section 6, which he knows or has reason to believe it to be false; or

- (c) being a registered dealer, falsely represents when purchasing any class of goods for use by him in the manufacture of any goods for sale, that goods of such class are covered by his certificate of registration; or
- (d) not being a registered dealer, falsely represents when purchasing goods in Himachal Pradesh that he is a registered dealer; or
- (e) after purchasing any goods for any of the purposes specified in the Act, fails, without reasonable excuse, to make use of the goods for any such purpose; or
- (f) has in his possession any form issued under the Act on payment by the Government, which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder; or
- (g) prevents inspection or examination of books, documents and accounts or wilfully fails to produce such books, documents and accounts mentioned in section 20; or
- (h) fails to carry with him any of the records or documents specified in section 22; or
- (i) makes any statement or declaration in any of the documents specified in section 22 or section 22-A, as the case may be, which statement or declaration he knows or, has reasons to believe to be false; or
- (j) in any way is knowingly concerned in any fraudulent evasion or attempt at evasion or abetment of evasion of any tax payable in respect of the sale or purchase of any goods under this Act; or
- (k) if he is a driver or any other person-in-charge of goods vehicle or vessel or an owner of the goods refuses on demand by the officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Inspector, to give his name and address or the name and address of the owner of the goods vehicle or of the consignor or consignee of the goods or gives any name and address of any of these persons which he knows or has reason to believe to be false; or
- (l) aids or abets any person in the commission of any offence specified in this sub-section;

he shall, without prejudice to the recovery of any tax or interest or penalty which may be due from him, be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence, is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

(2) Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder, or any order or direction made or given thereunder, shall, if no other penalty is provided either under sub-section (1) of this section or under any other provisions of this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees, and where such contravention or failure is continuing one, to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

(3) Any officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Officer, appointed

under sub-section (1) of section 3 or such other officer as the State Government may, by notification, appoint, may after affording to the person concerned a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (2):

Provided that the officer-in-charge of the check post or a barrier shall exercise such powers only at such check posts or barriers.

35-A. Imposition of penalty in lieu of prosecution.—If any person specified in sub-section (1) of section 35 is guilty of an offence under that sub-section, any officer incharge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Officer appointed under sub-section (1) of section 3, or such other officer as the State Government may, by notification, appoint, within his jurisdiction, may, after affording to the person concerned a reasonable opportunity of being heard, by order, in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods, if the sale had been a sale falling within this Act:

Provided that the penalty in case of non-taxable goods shall be calculated as if such goods were liable to tax at the rate of ten paise in a rupee:

Provided further that the penalty for offences under sub-section (7) of section 12 shall be imposed under the same sub-section:

Provided further that no prosecution for an offence under sub-section (1) of section 35 shall be instituted in respect of the same facts on which a penalty has been imposed under this section or sub-section (7) of section 12.

35-B. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with previous sanction of the Government or of such officer as may be authorised by a notification published in Official Gazette and no Court inferior to that of a Magistrate of the first class shall try any such offence.

(2) All offences punishable under sub-section (1) of section 35, of this Act shall be cognizable and bailable.”

8. In sub-section (2) of section 40 of the principal Act—

(a) after clause (h) the following clause (hh) shall be added, namely:—

“(hh) the manner in which deductions are to be made and the deduction certificate is to be issued under sub-sections (1) and (4) of section 12-A;” and

(b) after clause (r) the following clauses (rr) and (rrr) shall be added, namely:—

“(rr) the form and the manner in which the certificate under section 42-B is to be furnished;

(rrr) the restrictions and conditions subject to which and the manner in

**Amendment
of section
40.**

which the set off under sub-section (2) of section 42-C is to be granted;"

Substitution
of section
42.

9. For section 42 of the principal Act, the following section shall be substituted, namely:—

"42. *Powers to exempt.*—(1) The Government if satisfied that it is necessary or expedient so to do in the interest of cottage industries or small scale industries may, by notification, exempt either wholly or to such extent only as may be specified in the said notification any class of co-operative societies or persons from the payment of tax leviable on the sale of goods manufactured by such societies/ or persons subject to such conditions as may be specified in such notification.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before the State Legislature."

Insertion of
sections
42-A, 42-B,
42-C and
42-D.

10. After section 42 of the principal Act, the following sections 42-A, 42-B, 42-C and 42-D shall be inserted, namely:—

"42-A *Special provisions relating to deferred payment of tax by industrial units.*—(1) Notwithstanding anything contained in any other provisions of this Act, if the Government is of the opinion that with a view to provide incentives to the entrepreneurs setting up new industrial units in the State for manufacturing goods for sale, it is necessary or expedient in the public interest so to do, it may, under a scheme notified in this behalf under this Act and subject to such restrictions and conditions as may be specified in such scheme, provide for deferred payment of tax payable under section 12 by such entrepreneur who is registered as a dealer under this Act.

(2) Subject to the provisions of sub-section (1), the entrepreneur referred to therein, if eligible for grant of facility of deferred payment of tax under the scheme notified under sub-section (1) may make deferred payment of tax payable on the sale of goods manufactured by him.

42-B. *Concessional rate of tax on certain raw materials.*—Notwithstanding anything contained in this Act, but subject to such restrictions and conditions as may be specified, the State Government may, if it is expedient in the public interest so to do, by notification, exempt wholly or fix a concessional rate of tax, on the sale, to an entrepreneur, of goods, specified in his certificate of registration, for use by him as raw material in the manufacture in Himachal Pradesh of any goods:—

(a) for sale in the State of Himachal Pradesh; or

(b) for sale in the course of inter-State trade or commerce :

Provided that the tax on such sales shall be levied at full rates fixed under section 6 unless the dealer making the sale to such entrepreneur furnishes

to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the eligible entrepreneur.

42-C. Set off of tax in respect of tax paid goods in certain circumstances.—

- (1) Subject to such restrictions and conditions as may be prescribed, a set off, as provided in sub-section (2), shall be granted in such manner as may be prescribed, to a registered dealer in respect of tax paid goods in the circumstances mentioned in sub-section (2).
- (2) When the registered dealer purchases any goods, which have suffered tax either under sub-section (2) of section 6 at full rates or under section 42 or section 42-B at the concessional rates, for use of such goods as raw-material in the manufacture in Himachal Pradesh of any goods for sale, he shall be entitled to a set off of tax equal to the difference between the aggregate liability on the sale of final product minus the amount of tax already paid by the selling dealer.

42-D. Penalty for utilisation of goods for other purposes.—Where any goods purchased by a registered dealer either under sub-section (1) of section 42 or sub-section (1) of section 42-B, at concessional rates, for use by him in the manufacture of any goods in Himachal Pradesh, other than goods declared tax free under section 7—

- (a) for sale in the State of Himachal Pradesh; or
- (b) for sale in the course of inter-State trade or commerce, are utilised by him for any purpose other than those specified in clause (a) or (b), such dealer shall be liable to pay as penalty, such amount not less than the difference between the amount of tax on the sale of such goods at the full rate applicable thereto under section 6 and the amount of tax payable under sub-section (1) of section 42 or sub-section (1) of section 42-B, but not exceeding one and a half times the amount of tax payable at such full rate, as any officer appointed under sub-section (1) of section 3 may, by order, impose:

Provided that no order imposing such penalty shall be passed under this section unless such dealer has been given a reasonable opportunity of being heard."

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11. (1) The provisions of section 6 of the principal Act, as amended by section 4 of the Himachal Pradesh General Sales Tax (Amendment) Act, 1991 shall be deemed to be and to have always been valid and effective from the 1st day of April, 1991 irrespective of the fact that the said Act, after having been passed by the State Legislature on 20th day of March, 1991, has been assented to on 18th day of April, 1991 and published in the Official Gazette on 20th day of April, 1991, and accordingly—

- (a) the tax leviable in pursuance of the notification No. EXN-F(11)-1/91, dated the 2nd May, 1991 published in the extra-ordinary issue of the Official Gazette dated 3rd May, 1991 and notification No. EXN-F(11)-1/91, dated 13th June, 1991 published in the extra-ordinary issue of the Official Gazette dated the 15th June,

Validation and exemption.

1991 at the rates of 8, 11, 7.5, 30 and 3.5 paise in a rupee shall be deemed to be and shall be deemed always to have been levied with effect from 1st day of April, 1991; and

- (b) the tax leviable in pursuance of notification No. EXN-F(11)/91, dated 13th June, 1991 published in the extra-ordinary issue of the Official Gazette dated 15th June, 1991 at the rate of 2.5% for the first five years and at the rate of 4.5% for the next five years in respect of goods leviable to general sales tax at the rate of 8% and in case of goods leviable to general sales tax upto the rate of 11% the rate of 4% for the first five years and 6% for the next five years shall be deemed to be and shall be deemed always to have been levied with effect from 1st day of April, 1991;

and notwithstanding any judgement or decree or order of any Court, tribunal or authority to the contrary no notification which was issued under section 6 of the Himachal Pradesh General Sales Tax Act, 1968 as amended by the Himachal Pradesh General Sales Tax (Amendment) Act, 1991, before the commencement of this Act and which levied or authorised the levy of or purported to levy or authorise the levy of the tax (hereafter in this section referred to as the aforesaid tax) at enhanced rate shall be deemed to be invalid or ever to have been invalid on the ground merely that the authority issuing such notifications did not have competence to issue such notification, and accordingly—

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- (i) all the aforesaid taxes levied or collected or purporting to have been levied or collected under section 6 of the principal Act before the commencement of this Act shall be deemed and be deemed always to have been validly levied or collected in accordance with law;
 - (ii) no suit or other proceeding shall be maintained or continued in any court or before any tribunal or authority for the refund of, and no enforcement shall be made by any Court, tribunal or authority of any decree or order directing the refund of any such aforesaid tax which has been collected;
 - (iii) recoveries shall be made, in accordance with the provisions of said section 6 and the notifications of all amounts which would have been collected thereunder as such aforesaid tax if this section had been in force at all material times.
- (2) Notwithstanding anything contained in sub-section (1)—
- (a) where any sale of goods taxable at the rates specified in the notification No. EXN-F (11)-1/91, dated 2nd May, 1991 referred to in clause (a) of sub-section (1) of this section has been affected during the period between the 1st day of April, 1991 and the 3rd day of May, 1991;
 - (b) where any purchase of resin taxable at the rate of 8 paise in a rupee specified in the notification No. EXN-F (11)-1/91, dated 13th June, 1991, referred in clause (a) of sub-section (1) of this section has been affected during the period between the 1st day of April, 1991 and the 15th day of June, 1991;
 - (c) where any sale of goods taxable at the rates specified in the notification No. EXN-F (11)-1/91, dated 13th June, 1991 referred to in clause (b) of sub-section (1) of this section has been affected between the 1st day of April, 1991, and the 15th day of June, 1991;

the dealer affecting such sale or affecting purchase of resin shall pay the tax on the taxable turnover at the basic rates enhanced by 10% of the respective rates prescribed prior to the 1st day of April, 1991 for various classes of goods and for goods manufactured by smallscale industrial units.

(3) For the removal of doubts it is hereby declared that—

- (a) nothing in the sub-section (2) shall be construed as preventing any person—
 - (i) from questioning in accordance with the provisions referred to in this section, the assessment, re-assessment, levy or collection of the aforesaid tax; or
 - (ii) from claiming refund of the aforesaid tax paid by him in excess of the amount due from him under any such provision; and
- (b) no act or omission on the part of any person, before the commencement of this Act, shall be punishable as an offence which would not have been so punishable if this Act had not come into force.

STATEMENT OF OBJECTS AND REASONS

The taxable quantum for general dealers has been enhanced to rupees 3,00,000 per annum. In order to bring the dealers doing business of running a tandoor, loh, dhaba and a halwai shop at par with the general dealers, the limit of taxable quantum is proposed to be enhanced from rupees 1,00,000 to rupees 3,00,000 per annum. Further, the system of payments by crossed cheques results in delayed payments of tax due and it is required to be geared up so that on the pretext of furnishing crossed cheques the tax payments are not delayed beyond due dates. Although sales tax on goods sold in work contracts has been leviable since 1985, yet its implementation could not make the requisite progress, owing to which it is essential to enact provisions for deduction of sales tax from the bills of works contractors. For making the system effective, it is also essential to devise special mode of recovery so that the tax due to the Government is secured. Anti-revenue activities in the nature of furnishing false documents and de-frauding the Government revenue are thriving without corresponding liability for such illegal activities. As such, it has become necessary to prescribe penalties for fraudulent activities, to curb the practice of tendering false documents prejudicially affecting the revenue interests of the State; and to make the provisions of the Act more effective and deterrent as well. With regard to industries, it is essential to make adequate enabling provisions for deferred payment of tax, concessional rate of tax and set-off of the tax paid on the purchase of raw material by industrial units and utilisation of such raw material. This has necessitated the amendments in the Himachal Pradesh General Sales Tax Act, 1968.

This Bill seeks to achieve the aforesaid objectives.

SHIMLA:
the 11th September, 1991.

NAGIN CHANDER PAL,
Minister-in-charge.

FINANCIAL MEMORANDUM

Clause 2 of the Bill proposes to enhance the taxable quantum of dealers running a tandoor, loh, dhaba and a halwai shop from rupees 1,00,000 to rupees 3,00,000 per annum, as a result of which there will be approximate recurring loss of rupees fifteen lakh per annum to the State exchequer.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 4 and 10 read with clause 8 of the Bill seek to empower the State Government to make the rules to prescribe the manner in which deductions from bills of work contractors and the deduction certificates are to be issued in respect of the tax deducted, to prescribe the form and manner in which the certificates regarding payment of tax at concessional rates under section 42-B are to be furnished and also to prescribe restrictions and conditions subject to which and the manner in which the set-off under section 42-C is to be granted. The rules so made are to be laid on the table of the House. The proposed delegation is essential and normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[File No. EXN-F (11)-1/9]-Part]

The Governor of Himachal Pradesh, after having been informed of the subject-matter of the Himachal Pradesh General Sales Tax (Amendment and Validation) Bill, 1991, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

